

D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES

-against-

ORDER
00-CR-240 (NGG)

ASSLAN MUJA,

Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

On December 26, 2003, Defendant Asslan Muja ("Defendant") made a motion for a new trial on the grounds of newly discovered evidence. His "newly discovered evidence" consisted of an affidavit from co-defendant Taulant Hysko ("Hysko") stating that Hysko met Defendant for the first time in June 2002 at the Federal Correctional Institution in Otisville, New York.

Because Defendant's appeal of his conviction and sentence was pending at that time, the court deferred decision of Defendant's motion for a new trial until the Second Circuit Court of Appeals remanded Defendant's case. See Fed. R. Crim. P. 33 ("If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.") Defendant's case was remanded on September 28, 2005, and Defendant renewed his motion on July 21, 2006 and again on May 16, 2008. For the reasons stated below, Defendant's motion for a new trial is now denied.

A Rule 33 motion for a new trial based upon previously-undiscovered evidence is ordinarily not favored and should be granted only with great caution. Ordinarily, relief is justified under Rule 33 only if the newly-discovered evidence could not have been discovered, exercising due diligence, before or during trial, and that evidence is so material and non-cumulative that its admission would probably lead to an acquittal.

United States v. Gallego, 191 F.3d 156, 161 (2d Cir.1999) (internal citations omitted).

The affidavit presented by Defendant to the court is not newly-discovered evidence for,

assuming the truth of Hysko's affidavit, at Defendant's trial in early 2002 Defendant had the same awareness as Hysko that he and Hysko had never met. As Defendant has therefore not shown the existence of any newly-discovered evidence, his motion for a new trial is denied.¹

SO ORDERED.

Dated: Brooklyn, New York
September 15, 2008

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS
United States District Judge

¹ Defendant claims that the Government never responded to his motion for a new trial. The Government, however, did file a response. See Docket Entry # 352 (Government Letter dated May 17, 2007).